

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OBJECTION OF UNITED STATES POSTAL SERVICE
TO UPS INTERROGATORIES
UPS/USPS-T33-44bc, 45e-h, m-p, 46bc, 47e-h, m-p, 48-50, 52c, 57-58
TO WITNESS SHARKEY
(August 7, 1997)

As part of an attempt to informally resolve a dispute regarding provision, in this proceeding, of commercially sensitive, trade secret information sought by the United Parcel Service (UPS) relating to a contract between the Postal Service and Emery Worldwide Airlines (Emery) which establishes a PMPC network for handling and transportation of Priority Mail, UPS agreed to suspend its efforts to seek the unredacted PMPC contract in favor of filing additional, more specific interrogatories based upon a redacted PMPC contract filed by the Postal Service. See Motion of United Parcel Service For Extension Of Time To Seek Production Of PMPC Contract (September 8, 1997). On September 11, 1997, UPS filed interrogatories 43-58 to witness Sharkey.

The new interrogatories filed by UPS are more restricted in scope, and, in many cases, are directed at provision of general information about the PMPC contract, or request provision of contract data in a more aggregated fashion. This change in focus should serve to lessen the risk of exposure of sensitive information in significant respects. The Postal Service appreciates the efforts of opposing counsel to narrow the area in dispute, and is receptive to these continuing efforts to resolve this discovery

controversy. In this regard, the Postal Service intends to respond to many of the new interrogatories without further objection.^{1/}

In order to preserve its position with respect to the need to protect from disclosure vital commercial information, however, the Postal Service must continue to object to the provision of certain information sought by UPS. Specifically, the Postal Service hereby objects to interrogatories UPS/USPS-T33-44bc, 45e-h, m-p, 46bc, 47e-h, m-p, 48-50, 52c, and 57-58. The information sought in these interrogatories is commercially sensitive, trade secret information of the Postal Service and/or its contractor, Emery, disclosure of which could result in great harm to important commercial interests of one or both entities. In addition, the Postal Service is concerned that the integrity of the procurement process could be compromised in the future if confidential business information submitted in response to a request for proposals were subjected to disclosure in discovery, and objects to disclosure for that reason.

Furthermore, some of the information sought has no direct relevance to the test year costs to the Postal Service under the contract, and thus have little relevance to this proceeding. In particular, “air transport cost elements” sought in subparts (m) through (p) of questions 45 and 47 have no bearing on Postal Service costs to be incurred under the contract. Finally, the information sought in interrogatory 52c, which requests an explanation regarding why Emery is required to transport Priority Mail segregated by shape, may be of general interest to a competitor such as UPS, but has no relevance to this proceeding.

¹ It should be noted, however, that some of the new interrogatories, such as 45 and 47, seek aggregation of data which may be quite time consuming to carry out. In preparing answers to such interrogatories, therefore, the Postal Service may require the forbearance of the Commission and counsel for UPS in permitting additional time for such production.

Despite its serious objections, the Postal Service is willing to consider provision of the information requested in interrogatories UPS/USPS-T33-44bc, 45e-h, 46bc, 47e-h, 48-50, and 57-58 under very strict protective conditions. In the present circumstances, however, the Postal Service considers the protective conditions ordinarily used in the past in Commission proceedings to be insufficient to negate the risk of disclosure and subsequent harm. In order for the Postal Service to agree to produce the requested information, it is critical that those receiving access to the information not be involved, in any way, now or in the foreseeable future, with competitive decisionmaking by UPS, or any other commercial rival of the Postal Service (or of its contractor, Emery). For this reason, in addition to the terms customarily included in Commission protective conditions, the following terms (or terms substantially similar), at minimum, would need to be included for the Postal Service to be willing to produce the requested information:

1. With respect to legal counsel, counsel gaining access must certify as follows:

My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decisionmaking as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the material disclosed under the protective order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning or participate in decisions about marketing or advertising strategies, product or service pricing, product or service research and development, product or service design, or competitive structuring and composition of bids, offers, or proposals with respect to which the use of the protected material could provide a competitive advantage.

2. With respect to expert consultants or witnesses, such persons gaining access must certify as follows:

I hereby certify that I am not involved in competitive decisionmaking as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the material disclosed under the protective order. Neither I nor my employer provides advice or participates in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means, for example, that neither I nor my employer provide advice concerning or participate in decisions about marketing or advertising strategies, product or service pricing, product or service research and development, product or service design, or competitive structuring and composition of bids, offers, or proposals with respect to which the use of the protected material could provide a competitive advantage.

My professional relationship with the party for whom I am retained in this proceeding and its personnel is strictly as a consultant on issues relevant to the proceeding. Neither I, my spouse, nor any member of my immediate family holds office or a management position in any company that is a party in this proceeding or in any competitor or potential competitor of a party.

The above conditions are similar to those used routinely in federal court, and should impose no undue restriction on any individual seeking limited access to the protected information for use in this proceeding. The Postal Service is hopeful that, with the

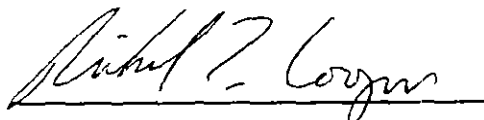
agreed-upon imposition of conditions such as these, the instant discovery dispute may be cooperatively resolved^{2/} among UPS, Emery, and the Postal Service.^{3/}

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Richard T. Cooper

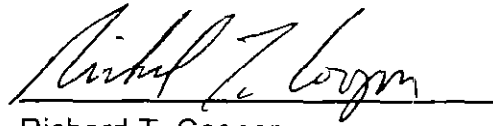
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September 22, 1997

² The press of business at this point of the case, and the time needed to consult with responsible Postal Service personnel, prevented further efforts to foster an informal resolution with counsel for UPS. Of course, Postal Service counsel remains receptive to such informal discussions in the future.

³ It is possible that Emery may wish to assert interests in this dispute not identical to those of the Postal Service. For that reason, Postal Service counsel has suggested to counsel for Emery that it may be appropriate for Emery to file comments of its own before the Commission.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

A handwritten signature in cursive script, appearing to read "Richard T. Cooper", written over a horizontal line.

Richard T. Cooper

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